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September 12, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 94-70

Dear Mr. Caton:

On behalf of Orville Ronald Brandon, the court-appointed Receiver for Ceder Carolina Limited Partnership, licensee of Station WJYQ(FM), Moncks Corner, South Carolina, there are transmitted herewith an original and four copies of each of the following:

1. Reply Comments of Orville Ronald Brandon.
2. Motion for Summary Dismissal.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very truly yours,

Brian M. Madden

Brian M. Madden

Enclosure

BMM/tlm

cc w/encl.:

Sharon P. McDonald
Gary S. Smithwick, Esq.

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 94-70
Table of Allotments)	
FM Broadcast Stations)	RM-8474
(Moncks Corner and Kiawah Island,)	
South Carolina))	

To: Chief, Allocations Branch

MOTION FOR SUMMARY DISMISSAL

RECEIVED
SEP 12 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Orville Ronald Brandon, the court-appointed Receiver for Ceder Carolina Limited Partnership, licensee of broadcast Station WJYQ(FM), Moncks Corner, South Carolina, by his attorneys, hereby requests that the Commission summarily dismiss the Counterproposal^{1/} filed by Sampit Broadcasters ("SB") in the above-referenced proceeding as a result of its numerous fundamental deficiencies under required Commission rule making procedures.

^{1/} Comments and Counterproposal of Sampit Broadcasters, filed August 26, 1994 ("SB Counterproposal"). The SB Counterproposal was submitted in this proceeding in conjunction with SB's Comments addressing the proposed upgrade of Station WJYQ. Mr. Brandon's response to SB's Comments on the proposed modification of the construction permit of Station WJYQ to operate on Channel 288C2 at Kiawah Island are being filed separately. As a consequence of the numerous procedural deficiencies of the SB Counterproposal identified herein, and in accordance with established Commission procedures, Mr. Brandon reserves his right to comment on any substantive aspect of the SB Counterproposal, including the failure of Sampit to qualify as a community for allocation purposes, if and until the Commission formally announces the filing of the SB Counterproposal.

Station WJYQ is authorized, pursuant to a valid construction permit, for construction and operation on Channel 287C3 at Moncks Corner.^{2/} At the station's request, in this proceeding the Commission has proposed the amendment of Section 73.202(b) of the rules to upgrade the station to operate on Channel 288C2 at Kiawah Island, as that community's first local transmission service, and to modify the construction permit of Station WJYQ accordingly. Mr. Brandon filed comments in support of this proposal on August 26, 1994, as the licensee of Station WJYQ.

The SB Counterproposal instead proposes that the Commission make a series of interdependent changes to the FM Table of Allotments: the allocation of Channel 288A to Kiawah Island, the substitution of Channel 287A instead of Channel 287C3 at Moncks Corner, and the allocation of Channel 289A to Sampit, South Carolina. For the reasons set forth herein, the SB

^{2/} At the request of Station WJYQ, in MM Docket No. 91-127, the Commission substituted Channel 287C3 for Channel 288A at Moncks Corner and modified the license of Station WJYQ accordingly. *FM Table of Allotments (Blackville, South Carolina, et al.)*, 7 FCC Rcd 6522 (Allocations Branch, 1992). The licensee of Station WJYQ applied for, and subsequently obtained, a construction permit (File No. BMPH-930511IB) to operate on Channel 287C3. This permit remains in full force and effect.

Counterproposal is procedurally defective and must be dismissed summarily without any substantive consideration.

**SB Has Failed to Provide the Required
Expression of Interest
for Each of Its Proposed Allotments**

It is fundamental that the Commission "will not allot a channel to a community absent an expression of interest in applying for that channel." See, e.g., *FM Table of Allotments (Wellington, Kansas, et al.)*, 7 FCC Rcd 2195, 2196 (Allocations Branch, 1992) ("*Wellington*"); *FM Table of Allotments (Carolina Beach, North Carolina, et al.)*, 7 FCC Rcd 544, 545 (Commission, 1992). Yet, despite this elementary requirement, SB has failed to indicate that it will apply for two of the three channels which it has requested. In fact, SB has expressly disclaimed any interest in applying for Channel 287A at Moncks Corner. SB Counterproposal at 4. On this basis alone, the SB Counterproposal must be dismissed.

Furthermore, nowhere has SB provided any assurance that it will apply for Channel 288A at Kiawah Island. It might be contended that SB does not need to represent its intention to apply for Channel 288A at Kiawah Island, since Mr. Brandon has proposed the operation of Station WJYQ on Channel 288C2 there. However, the Commission will not "allot a channel of a lesser

class than requested, absent an expression of interest in applying for that channel, in order to accommodate another party's allotment proposal." *Wellington, supra*, 7 FCC Rcd at 2196; *FM Table of Allotments (Epworth, Iowa, et al.)*, 7 FCC Rcd 106 (Allocations Branch, 1992). Mr. Brandon has expressed no interest in operating a Class A station at Kiawah Island. See *Declaration of Orville Ronald Brandon ("Declaration")*, attached hereto, at ¶3. The absence of any expression of interest by SB thus makes the proposed allotment of Channel 288A to Kiawah Island unacceptable and requires that the Commission dismiss the SB Counterproposal.

**The SB Counterproposal is Dependent
upon an Involuntary Downgrade
of the Authorized Facilities of Station WJYQ**

There are other reasons why the Commission must summarily dismiss the SB Counterproposal. As demonstrated below, the SB Counterproposal would require the involuntary downgrade of Station WJYQ's existing authorization at Moncks Corner from Channel 287C3 to Channel 287A. SB has offered not a single case citation in support of such a change. It is clearly contrary to Commission policy and precedent to consider any allocation proposal that demands the downgrading of another, validly authorized station, absent -- at a bare minimum -- agreement by

the affected station to the downgrade. *FM Table of Allotments (Flora, Mississippi, et al.)* ("Flora"), 7 FCC Rcd 5477, n.5 (Allocations Branch, 1992). As the licensee of Station WJYQ, Mr. Brandon is the only party who can consent to a downgrade for the station. In his *Declaration*, Mr. Brandon states that he was neither contacted by anyone seeking his approval of a downgrade of Station WJYQ, nor does he consent to the downgrade. *Declaration* at ¶3.

The feasibility of the SB Counterproposal requires the downgrade of the Moncks Corner allocation, because SB's proposal to allot Channel 288A to Kiawah Island would otherwise be 33.29 kilometers short-spaced to the transmitter site authorized for Station WJYQ's operation on Channel 287C3. *Technical Statement of John Lundin* ("Technical Statement"), attached hereto, at 2 & Figure 2. SB has proposed no alternative Class C3 channel for Station WJYQ, and, as indicated by Mr. Lundin, no alternative Class C3 channel is available for use at Moncks Corner by Station WJYQ. *Id.*

Absent the downgrade of the Moncks Corner allotment to Class A status, SB's Counterproposal fails to satisfy the threshold required minimum separation rules for its allotment of Channel 288A to Kiawah Island. As noted above, Mr. Brandon does

not consent to the downgrade of Station WJYQ at Moncks Corner. The SB Counterproposal is therefore unacceptable for Commission consideration.

**The SB Counterproposal is Dependent
upon the Forced Involuntary Relocation of
the Authorized Transmitter Site for Station WJYQ**

Finally, dismissal of the SB Counterproposal is required because, in the absence of an involuntary downgrade of Station WJYQ, the SB Counterproposal can comply with the minimum spacing requirements only if SB can effect a relocation of the authorized transmitter site of Station WJYQ. As Mr. Lundin explains, the reference point used by SB for its proposed Moncks Corner allotment is 17.6 kilometers north-northeast of the transmitter site specified in the construction permit issued to Station WJYQ. *Technical Statement* at 2. Unless SB can move the reference point for the Moncks Corner allotment to a different location than that authorized for use by Station WJYQ, the proposed allocation of Channel 288A to Kiawah Island is 33.29 kilometers short-spaced to Station WJYQ operating on Channel 287C3. *Id.* In fact, without a forced relocation of the station's transmitter site, SB's proposed allotment for Kiawah Island would be 16.29 kilometers short-spaced to Station WJYQ even if it were downgraded to operate on Channel 287A. *Technical*

Statement at Figure 2. These substantial separation deficiencies plainly render the SB Counterproposal unacceptable.

SB has neither sought nor obtained Mr. Brandon's consent to the relocation of the transmitter site of Station WJYQ. See Declaration at ¶3. In the absence of Mr. Brandon's consent, SB cannot properly advance an allocation proposal which so obviously requires the specification of a new transmitter site for Station WJYQ. The Commission will not force a station to relocate its transmitter site without the station's consent. *FM Table of Allotments (Claremore, Oklahoma, et al.)*, 3 FCC Rcd 4037, 4038 (Policy and Rules Division, 1988), rev. denied, 4 FCC Rcd 2181 (Commission, 1989); see also, *FM Table of Allotments (Beaumont and Big Bear Lake, California) ("Beaumont")*, 3 FCC Rcd 6458 (Policy and Rules Division, 1988); and *Modification of FM or Television Licenses Pursuant to Section 316 of the Communications Act*, 63 Rad. Reg. 2d (P&F) 58, 61 & n.6 ("[The Commission] will not require an affected station to change its transmitter site to accommodate a channel substitution").^{3/} As Mr. Brandon does not

^{3/} The fact that Station WJYQ has not yet commenced operation on Channel 287C3 is of no significance in this regard. The Commission has stated that its policy against forcing a station to relocate its transmitter site is not merely to avoid the expense of the relocation (which SB has nowhere promised to assume), but also to eliminate "the administrative difficulty in selecting and approving a new transmitter site for an existing station...." *Beaumont*,

(continued...)

consent to a relocation of the transmitter site of Station WJYQ, the Commission must dismiss the SB Counterproposal as unacceptable for failure to satisfy the required minimum separation standards.

Conclusion

As shown herein, the SB Counterproposal is marked by numerous procedural deficiencies, each one of which is adequate, standing alone, to render the SB Counterproposal unacceptable and to compel its dismissal. No expression of interest has been supplied for either the Moncks Corner or the Kiawah Island allotments. The Kiawah Island allocation fails to meet the minimum separation rules with respect to the authorized transmitter site of Station WJYQ unless the station is forced into a downgrade in class and/or the relocation of its transmitter site. The licensee of Station WJYQ strongly rejects both of these alternatives.

3/ (...continued)

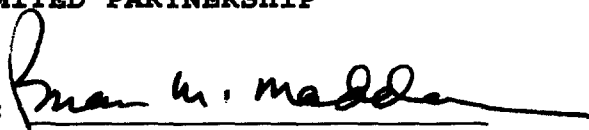
supra, 3 FCC Rcd at 6458. The transmitter site authorized for operation by Station WJYQ on Channel 287C3 is the same as its licensed site on Channel 288A. *Technical Statement* at 1. Station WJYQ does not forfeit its construction permit because it has filed for an upgrade. There has never been any statement or suggestion made to the Commission on behalf of Station WJYQ that if the proposed upgrade of the station to Channel 288C2 at Kiawah Island were denied, the station would not be constructed as authorized by the outstanding construction permit for Channel 287C3. Certainly, no claim to this effect can validly be made by SB.

The Commission requires that all counterproposals be technically correct and complete at the time of filing. *Flora, supra*, 7 FCC Rcd at 5477, n.4. The deficiencies in the SB Counterproposal are not minor discrepancies, but involve critical threshold standards that must be met by every proposal in an allotment proceeding. The SB Counterproposal must therefore be dismissed as unacceptable for filing without any substantive consideration.

Respectfully submitted,

ORVILLE RONALD BRANDON,
RECEIVER FOR CEDER CAROLINA
LIMITED PARTNERSHIP

By:


Brian M. Madden
Walter P. Jacob

Leventhal, Senter & Lerman
2000 K St., N.W., Ste. 600
Washington, D.C. 20006
(202) 429-8970

His attorneys

September 12, 1994

DECLARATION

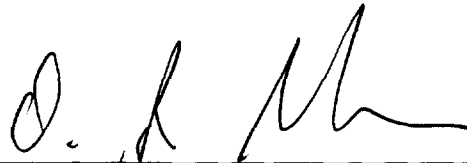
Orville Ronald Brandon hereby states as follows:

1. I am the court-appointed Receiver for Ceder Carolina Limited Partnership. In this capacity, I am the authorized licensee for Station WJYQ(FM), Moncks Corner, South Carolina.

2. I am aware that a counterproposal has been filed with the Federal Communications Commission by Sampit Broadcasters that seeks the allotment of Channel 288A at Kiawah Island, South Carolina, Channel 287A at Moncks Corner, and Channel 289A at Sampit. This counterproposal is in conflict with the petition for rule making filed on behalf of Station WJYQ, in support of which I authorized the filing of Comments with the FCC on August 26, 1994.

3. No one from or on behalf of Sampit Broadcasters, or anyone else for that matter, has contacted me to seek my consent to a "downgrade" of Station WJYQ's authorized facilities on Channel 287C3 at Moncks Corner, to a "downgrade" of Station WJYQ's proposed operation on Channel 288C2 at Kiawah Island, or to a relocation of the authorized transmitter site for Station WJYQ. Had anyone contacted me for this purpose, I would have told them that I refused to consent to any "downgrade" or other degradation in the proposed or authorized service of Station WJYQ, and would not consent to a relocation of the authorized transmitter site.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5 day of September, 1994.



Orville Ronald Brandon
Receiver for Ceder Carolina
Limited Partnership

TECHNICAL STATEMENT SUPPORTING
A MOTION TO DISMISS COUNTERPROPOSAL
PREPARED FOR
ORVILLE RONALD BRANDON
MM DOCKET 94-70

These technical comments and attached exhibits have been prepared on behalf of Orville Ronald Brandon, Receiver (ORB), licensee of station WJYQ(FM) at Moncks Corner, South Carolina.⁴¹ In the FCC's Notice of Proposed Rule Making (NPRM) in MM Docket 94-70, it is proposed to upgrade WJYQ to channel 288C2 (105.5 MHz) and change city of allotment from Moncks Corner, South Carolina to Kiawah Island, South Carolina. Station WJYQ is licensed (BLH-861218KB) to operate on channel 288A at Moncks Corner, and holds a construction permit (BMPH-930511IB) at its license site for operation on channel 287C3 (105.3 MHz).

This response from ORB is in reply to a counterproposal filed by another party in MM Docket 94-70. Sampit Broadcasters (SB) proposes to allot channel 287A to Moncks Corner, South Carolina; channel 288A to Kiawah Island, South Carolina; and channel 289A to Sampit, South Carolina.

All three of SB's proposals are mutually exclusive with ORB's proposal for channel 288C2 at Kiawah Island. SB's proposals for channel 288A at Kiawah Island and the separate proposal for channel 287A at Moncks

⁴¹ Orville Ronald Brandon is the successor-in-interest to Cedar Carolina Limited Partnership, the original petitioner in MM Docket 94-70.

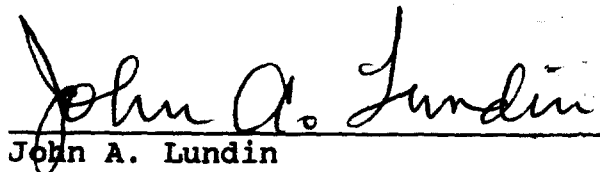
Corner are both short-spaced to the authorized operation of WJYQ in contravention of the FCC's minimum separation requirements. Furthermore, SB has proposed a replacement channel at Moncks Corner at a site other than as currently authorized.

Figure 1 is a separation study for channel 287A at Moncks Corner from SB's proposed reference site. As shown, SB has proposed a channel 287A site approximately 17.6 kilometers north-northeast of WJYQ's authorized site, which is 124.41 kilometers short-spaced to the WJYQ authorized facilities. SB has not proposed an alternative Class C3 channel for WJYQ's current authorization on channel 287C3. A Class C3 search was conducted to determine if an alternative Class C3 channel was possible at the authorized WJYQ site. No alternative Class C3 channel was found.

Figure 2 is a study for channel 288A at SB's proposed reference site at Kiawah Island. This proposal is 33.29 kilometers short-spaced to the authorized WJXQ site.

I, John A. Lundin, am Vice President of du Treil, Lundin & Rackley, Inc., a consulting communications engineering firm located at 240 North Washington Boulevard, Suite 700, Sarasota, Florida, 34236. I am a registered professional engineer in the District of Columbia (#7499) and the State of Florida (#46454). My qualifications as an engineer are matter of record with the Federal Communications Commission.

The attached technical report has been prepared for Orville Ronald Brandon (ORB). The calculations and exhibits contained in this report were made by me personally or under my direction. All facts contained therein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true.


John A. Lundin

Registered Professional Engineer
DC No. 7499
FL No. 46454

September 9, 1994

TECHNICAL STATEMENT SUPPORTING
A MOTION TO DISMISS COUNTERPROPOSAL
PREPARED FOR
ORVILLE RONALD BRANDON
MM DOCKET 94-70

FM SEPARATION STUDY

Job Title :SB's Proposed Moncks Corner, SC Separation Buffer 40 km
FCC DB Date : 07/26/94
Channel 287A (105.3 MHz) Coordinates : 33-14-20 79-57-35

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
WACJ CP	Bowman SC	BPH910301MH	233A 94.5	3.0 100.0	33-19-17 80-44-52	277.4	73.99 63.99	10 CLEAR
WICI CPM	Sumter SC	BMPH931220IH	234A 94.7	2.85 146.0	33-51-55 80-17-09	336.6	75.80 65.80	10 CLEAR
WNOK LIC	Columbia SC	BLH891025IA	284C 104.7	100. DA 306.0	34-09-06 80-54-36	319.4	134.22 39.22	95 CLEAR
WSHG CP	Ridgeland SC	BPH921008JT	285A 104.9	1.85 124.0	32-26-10 80-55-23	225.5	126.74 95.74	31 CLEAR
*To amend to channel 285C3 Per D91-41								
WRHA APP	Johnsonville SC	BMPH940411JC	286A 105.1	4.4 114.0	33-49-00 79-34-35	28.8	73.32 1.32	72 CLOSE
WRHA CP	Johnsonville SC	BPH860407MF	286A 105.1	3.00 98.0	33-47-00 79-28-02	36.9	75.77 3.77	72 CLOSE
WGFG CP	Branchville SC	BPH920925MD	286A 105.1	6.0 100.0	33-16-30 80-50-08	273.1	81.72 9.72	72 CLOSE
First Come First Serve								
WJYQ CPM	Moncks Corner SC	BMPH930511IB	287C3 105.3	20.0 DA 114.0	33-05-35 80-02-01	203.0 SS	17.59 -124.41	142 SHORT
From channel 288A Per D91-127								
WWIR CP	Fair Bluff NC	BPH890313MQ	287A 105.3	1.3 146.0	34-20-21 79-06-10	32.7	145.58 30.58	115 CLEAR
WRHQ LIC	Richmond Hill GA	BLH930325KA	287C3 105.3	11.0 148.0	32-02-52 81-07-26	219.8	171.41 29.41	142 CLEAR
From Channel 287A Per D91-127								
WJYQ LIC	Moncks Corner SC	BLH861218KB	288A 105.5	2.05 117.0	33-05-35 80-02-01	203.0	17.59 -54.41	72 SHORT
*To channel 287C3 Per D91-127								
WJYQ PADD	Kiawah Island SC	RM8474	288C2 105.5	.0	32-43-38 80-00-05	183.9	56.89 -49.11	106 SHORT
Site Restricted 13KM North								

FM SEPARATION STUDY

Job Title :SB's Proposed Moncks Corner, SC Separation Buffer 40 km
FCC DB Date : 07/26/94
Channel 287A (105.3 MHz) Coordinates : 33-14-20 79-57-35

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
Prop.	Kiawah Island SC	SB Proposal	288A 105.5		32-35-45 80-07-05	191.8	72.84 0.84	72 CLOSE
WDARFM CP	Darlington SC	BPH931229IC	288C3 105.5	17.0 DA 122.0	34-18-58 79-53-17	3.1 SS	119.67 30.67	89 CLEAR
From channel 288A Per D89-326								
Prop.	Sampit SC	SB Proposal	289A 105.7		33-18-20 79-25-00	81.5	51.13 21.13	31 CLEAR
WTUA CP	St. Stephen SC	BPH870918NC	290A 105.9	3.00 100.0	33-29-36 79-53-21	13.0	28.98 -2.02	31 SHORT
*To amend to channel 291A Per D89-326								

** End of separation study for channel 287A **

Figure 2

TECHNICAL STATEMENT SUPPORTING
A MOTION TO DISMISS COUNTERPROPOSAL
PREPARED FOR
ORVILLE RONALD BRANDON
MM DOCKET 94-70

FM SEPARATION STUDY

Job Title :SB's Proposed Kiawah Island, SC						Separation Buffer 40 km		
						FCC DB Date : 07/26/94		
Channel 288A (105.5 MHz)						Coordinates : 32-35-45 80-07-05		
Call	City		Channel	ERP (kW)	Latitude	Bearing	Dist.	Req.
Status	State	FCC File No.	Freq.	HAAT (m)	Longitude	deg-Tru	(km)	(km)
<hr/>								
WSHG	Ridgeland		285A	1.85	32-26-10	257.0	77.70	31
CP	SC	BPH921008JT	104.9	124.0	80-55-23		46.70	CLEAR
*To amend to channel 285C3 Per D91-41								
WSHG	Ridgeland		285C3	16.0	32-26-10	257.0	77.70	42
CP	SC	BPH920424ID	104.9	125.0	80-55-23		35.70	CLEAR
WGFG	Branchville		286A	6.0	33-16-30	318.6	100.89	31
CP	SC	BPH920925MD	105.1	100.0	80-50-08		69.89	CLEAR
First Come First Serve								
WJYQ	Moncks Corner		287C3	20.0	33-05-35	8.1	55.71	89
CPM	SC	BMPH930511IB	105.3	114.0	80-02-01	SS	-33.29	SHORT
From channel 288A Per D91-127								
Prop.	Moncks Corner		287A		33-14-20	11.7	72.84	72
	SC	SB Proposal	105.3	.0	79-57-35		0.84	CLOSE
WRHQ	Richmond Hill		287C3	11.0	32-02-52	237.5	112.54	89
LIC	GA	BLH930325KA	105.3	148.0	81-07-26		23.54	CLEAR
From Channel 287A Per D91-127								
WJYQ	Kiawah Island		288C2		32-43-38	36.7	18.23	166
PADD	SC	RM8474	105.5	.0	80-00-05		-147.77	SHORT
Site Restricted 13KM North								
WJYQ	Moncks Corner		288A	2.05	33-05-35	8.1	55.71	115
LIC	SC	BLH861218KB	105.5	117.0	80-02-01		-59.29	SHORT
*To channel 287C3 Per D91-127								
Prop.	Sampit		289A		33-18-20	39.6	102.50	72
	SC	SB Proposal	105.7		79-25-00		30.50	CLEAR
WZNY	Augusta		289C	100.	33-25-15	300.2	185.00	165
LIC	GA	BLH910705KB	105.7	356.0	81-50-19	SS	20.00	CLEAR
WTUA	St. Stephen		290A	3.00	33-29-36	12.0	101.81	31
CP	SC	BPH870918NC	105.9	100.0	79-53-21		70.81	CLEAR
*To amend to channel 291A Per D89-326								
WFXH	Hilton Head Island		291C2	10.5	32-19-50	249.3	82.57	55
LIC	SC	BLH910605KC	106.1	242.0	80-56-19	SS	27.57	CLEAR

** End of separation study for channel 288A **

Certificate of Service

I, Tamara L. Mariner certify that a copy of the foregoing "Motion for Summary Dismissal" has been hand delivered this 12th day of September, 1994, to the following:

Sharon P. McDonald
Federal Communications Commission
2025 M Street, N.W.
Room 8316
Washington, D.C. 20554

Gary S. Smithwick, Esq.
Smith & Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036



Tamara L. Mariner